

WETLANDS COUNCIL

MINUTES

June 11, 2019

The Wetlands Council met on Tuesday, June 11, 2019 in Rooms 112, 113, 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Matthew Bosiak, Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Seth Prescott, Russ St. Pierre, and Gretchen Young

Absentee: Councilors: Richard Mellor and Wendy Weisiger

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeal Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:00 a.m. with introductions and a quorum present.

3. **Status of Appeals** Paula Scott, Appeals Clerk

I. New Appeals

Docket No. 19-04 WtC (PNA) – Sagamore Landing Association and Daid and Margarete Witham Appeal

Subject: 02/25/19 Approval of Wetlands Permit #2018-03677 issued to Joan and Jon Dickinson

Hearing Officer: Not assigned

Status: May 10, 2019 received Petition for Appeal, Appearance for Lynn Preston and Appearance for Bryanna Devonshire. 5/13/19 issued receipt of Appeal Letter. 5/16/19 received Appearance of John-Mark Turner for the appellants. 5/17/19 received Appellant's Updated Service List. June 7, 2019 received Appearances from Attys. John Bosen and Bernard Pelech for the permittee. Council to accept or decline Appeal today (6/11/19).

- ***Councilor Lievens made a motion to accept the Appeal, second by Councilor Henderson. Motion passed unanimously.***

II. Decisions that need to be written/finalized and issued.

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer

Hearing Officer: October 17, 2017 David Conley appointed by AG.

Status: July 14, 2017 received Petition for Appeal. December 7, 2018 issued Pre-hearing Order scheduling hearing for April 9, 2019 at 9 a.m. January 7, 2019 received Motion to Compel. 1/17/19 issued letter granting Motion to Compel. February 22, 2019 received Appearance of Joshua Harrison for the Department. March 8, 2019 received Appellant's Witness and Exhibit List and a Motion to Continue and to Provide Information. 3/8/19 received State's Witness and Exhibit List. 3/12/19 received Permittee's witness and Exhibit List. 3/13/19 received Permittees Objection and Response to Appellant's Motion to Continue and Provide Information. 3/18/19 issued Ruling Granting in part and denying in part, Appellant's Motion to Continue and Provide Information. 3/18/19 received Objection to Permittee's Witness and Exhibit List. April 3, 2019 issued Ruling regarding Objection to Permittee's Witness and Exhibit List. 4/4/19 received Permittee's Objection and Petition for Reconsideration. 4/5/19 issued Ruling denying Permittee's Objection and Petition for Reconsideration. 4/9/19 Hearing and Deliberations were held. Order to be issued. 4/23/19 distributed Final Draft Order on Revised

Petition for comments from the Council. Motion passed to adopt the Order. May 14, 2019 issued Final Order on revised Petition for Appeal.

Docket No. 18-14 WtC – Kathleen McDonald Appeal

Subject: 9/17/18 Approval of Wetlands Permit #2017-00818 issued to Regina Gordon Revocable Trust

Hearing Officer: January 11, 2019 David Conley was appointed by AG.

Recused: Councilor Gove

Status: October 12, 2018 received Petition for Appeal. 10/15/18 issued Insufficient Appeal letter. 11/14/18 received Revised Petition for Appeal. November 19, 2018 issued Receipt of Revised Appeal. December 4, 2018 received Appearance of Patricia Paniciocco for permittee. Motion to Intervene and Motion requesting Summary Dismissed. January 4, 2019 received addition to Appeal. Council was made aware of a date discrepancy. Council accepted appeal and denied Motion for Summary Dismissal on January 8, 2019. 1/11/19 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/11/19 received Objection to Letter Request by McDonald to Supplement the Appeal record. 1/17/19 issued Notice of Pre-hearing Conference scheduled for February 22nd at 9 a.m. 2/22/19 issued Pre-hearing Order scheduling Hearing for May 14, 2019 at 9 a.m. 4/17/19 received Motion to Compel. 4/25/19 received Permittee's Witness List. 4/30/19 issued letter ruling granting Motion to Compel. 4/30/19 received Response to Appellant's Objection to Motion to Compel. May 2, 2019 received Intervenor's Amended Witness List. May 14, 2019 the Hearing and Deliberations were held. June 7, 2019 distributed the draft Decision and Order to the Council for comments.

III. Hearings or PHCs Pending

Docket No. 18-13 WtC – William R. Davis Appeal

Subject: 9/5/18 Approval of Wetlands Permit #2018-01848 issued to Kimberly A. Wesson Revocable Trust

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: October 5, 2018 received Petition for Appeal. 10/9/18 issued Insufficient Appeal letter. November 8, 2018 received Supplemental to Petition for Appeal. 11/9/18 issued Receipt of Revised Appeal letter. Council to accept or dismiss Appeal at today's meeting. Discussion was held. Motion to Deny was passed on 12/11/18. 12/12/18 issued Ruling denying Acceptance of Appeal. January 11, 2019 received Motion for Reconsideration. Discussion was held. February 12, 2019 Council granted Motion for Reconsideration. 2/14/19 issued ruling granting Motion for Reconsideration. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 9 a.m. March 18, 2019 issued Pre-hearing Order scheduling hearing for June 11, 2019 at 9 a.m. May 13, 2019 received Appellant's Witness and Exhibit List. Hearing is today at 9 a.m.

Docket No. 18-15 WtC – Nancy Hall and Edward Benway, Trustee Appeal

Subject: 9/18/18 Administrative Order No. 18-015 WD

Hearing Officer: December 17, 2018 David Conley was appointed by AG

Status: October 18, 2018 received Petition for Appeal. 10/19/18 issued Receipt of Appeal Letter. Council to accept or dismiss Appeal at today's meeting. Appeal was accepted on December 11, 2018. 12/12/18 issued Appeal Accepted letter. January 4, 2019 issued Notice of Pre-hearing Conference scheduled for January 28, 2019 at 1 p.m. 1/18/19 received Motion to Continue Pre-hearing Conference. 1/23/19 received Appearance from Collis Adams and issued Letter granting Motion to Continue PHC rescheduling it for May 6, 2019 at 10 a.m. May 1, 2019 received Assented-to Motion to Continue Pre-hearing Conference. 5/2/19 issued ruling granting Assented-to Motion to Continue Pre-Hearing Conference and rescheduled it to June 10th at 8:30 a.m. June 3, 2019 received Assented-To Motion to Continue Pre-Hearing Conference. 6/6/19 issued letter granting Assented-To Motion to Continue PHC and rescheduling it for September 12th at 9 a.m.

Docket No. 19-02 WtC – Timothy & Jean Pineau and Jean Pineau, Trustee Appeal

Subject: 12/19/18 amendment to Administrative Order No. 18-020 WD

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: January 11, 2019 received Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of Appeal letter. Council to accept or dismiss Appeal in today's meeting (2/12/19). Council voted to accept the Appeal on February 12, 2019. 2/19/19 issued Appeal accepted letter. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 10 a.m. 2/26/19 received Appearance from Atty. Reimers. 3/1/19 received Appearance from Atty. Aslin. 3/11/19 received Petition to Intervene. 3/18/19 issued Pre-hearing Order granting Motion to Intervene and scheduling a second Pre-hearing Conference for May 8, 2019 at 8 a.m. April 12, 2019 issued Notice of Rescheduled Pre-hearing Conference for June 11, 2019 at 8 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

V. Misc.

Docket No. 18-03 WtC – New Castle Conservation Commission Appeal

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 15, 2018 received Notice of Appeal. 1/04/19 received Appellant's Motion for Reconsideration of December 7, 2018 Order. February 12, 2019 received Appellant's Motion for Reconsideration. 2/19/19 received Objection to Appellant's Motion for Reconsideration. 2/19/19 received DES' Objection to Appellant's Motion for Reconsideration. 2/22/19 issued letter ruling denying Motion for Reconsideration.

Councilor Gove arrived at 8:06

1. **Approval of Minutes**

- ***Councilor Lievens made a motion to approve the May 14, 2019 meeting minutes, second by Councilor Bosiak. Motion passed unanimously. Councilors Henderson, Klass, Gove and Carbonneau abstained.***

2. **Public Input:** None

4. **New Business**

5. **Old Business**

Wetlands Rules Update- Mary Ann Tilton

Commissioner's response to the Council's comments was distributed. Additional rulemaking meetings to be held, with top of bank and mitigation to be discussed among other items. December 15, 2019 rules to be in effect. Now working to get DES and the public ready. There is will be a transition team, internal training, process updates, measures, database updates, and website reorganization. Already received 16 outreach requests. 2 internal trainings have already been held. Most outreach will begin in the fall. Questions from the Council were then addressed.

Chairman Kimball noted SB 203 passed the House. It was agreed that a letter will be sent from the Council to the Governor to encourage him to sign this bill.

An answer was received from Council's attorney that the Executive Order requiring an Audit Correction Action Plan does cover this Wetlands Council.

Councilor Prescott arrived at 8:30.

Sarah Yuhas-Kirn gave an update on the following:

- 1) Audit Corrective Action Plan that was to be submitted within 30 days. Wetlands did submit theirs yesterday. It was an effort to get their plan into the DAS template. She will come each month and give highlights on the corrective actions taken.
- 2) The Corrective Action Plan (CAP) Charter was distributed and Sarah reviewed it.
- 3) The audit mentions 'ad hoc rulemaking'. The only authority is statute and the only things required are by rules and statutes. DES has suspended the expedited permit review process. SOP has been removed until rules have been developed for expedited rules for permits. It will now be first-in, first-out. Questions from the Council were addressed.

Congratulations were given to Collis Adams on his upcoming retirement.

6. **Next Meeting –**

The next meeting will be August 13, 2019, with work on the rules.

7. **Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Henderson. Motion passed unanimously.***

Meeting adjourned at 8:51 a.m.

WETLANDS COUNCIL

HEARING MINUTES

June 11, 2019

The Wetlands Council met for
Docket No. 18-13 WtC – William R. Davis Appeal Hearing
Tuesday, June 11, 2019 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Matt Bosiak, Jim Gove, Deb Lievens, Lee Carbonneau, Carol Henderson, Seth Prescott, Michael Klass, Russ St. Pierre and Gretchen Young

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:15 a.m.

The Hearing record was closed at 12:55 p.m.

Deliberations were called to order at 1:00 p.m. and ended at 1:55 p.m.

Council voted to Deny the Appeal.